

JUL 23 2007

REMARKS

In the Final Office Action mailed on May 29, 2007, claims 1-6, 8-19, 27-32 and 34-35 were pending and stand finally rejected. In the remarks that follow, the final rejection is traversed and withdrawal of the same is respectfully requested. Reconsideration of the final rejections and allowance of the present application including claims 1-6, 8-19, 27-32 and 34-35 is respectfully requested.

Claims 1-6, 8-19 and 27-35 were rejected under 35 USC §102(b) as anticipated by U.S. Patent No. 5,484,437 to Michelson. With regard to claim 1, the Final Office Action asserts with reference to Fig. 7F of Michelson that Michelson discloses "said housing further including a first working channel port (Fig. 7F, longitudinal opening of near, 100) and a second working channel port (Fig. 7F, longitudinal opening near ref, 348) extending through said distal portion in communication with one another (Fig. 7F) and in communication with said proximal chamber (Fig. 7F)...."

Fig. 7F is a side sectional view of the Dual Outer Sleeve of Figs. 7C and 7D, the Distractors, and the Dual Cap of Fig. 7E seated. See col. 11, lines 39-41. Michelson discloses that element 100 is a long distractor, and Fig. 7F shows a pair of long distractors 100 received in a respective passage of one of the pair of hollow tubes of Dual Outer Sleeve 340. Dual Outer Sleeve 340 includes two hollow tubular members that are parallel and have a space 350 between them. See col. 27, line 61 to col. 28, line 16. Dual Driver Cap 420 of Fig. 7E includes a distal oval opening to engage the proximal end of Dual Outer Sleeve 340 and an area 354 that includes a pair of circular recesses in the cap to receive proximal crown or heads 110 of distractors 100. See col. 28, lines 31-44.

A review of the specification of Michelson reveals that Michelson fails to disclose the arrangement of elements asserted to be disclosed therein in the Final Office Action. As an initial matter, it is not understood what "longitudinal opening of near, 100" is referring to in Michelson. A review of Michelson did not reveal any structure that includes a longitudinal opening near 100. Rather, the hollow tubes of Dual Outer Sleeve 340 each include proximal and distal circular openings, and an elongated longitudinal passage between the end openings. Each of the passages of the hollow tubes is enclosed by the hollow tube and is isolated from the other by the wall of the respective tube. There is no disclosure of any longitudinal openings in the hollow tubes of

Dual Outer Sleeve 340. In fact, Michelson discloses an area 354 between the hollow tubes so that the tubes are spaced from one another. The assertion that "ports" near references 100 and 348 of Fig. 7F are longitudinal openings, or are in communication with one another, is not supported by the disclosure in Michelson, and withdrawal of this basis of the rejection of claim 1 is respectfully requested.

The Final Office Action also asserts "wherein said first and second working channel ports together form a substantially oval cross-sectional shape (Fig. 7E)." In contrast to the assertions in the Final Office Action, a review of the specification in Michelson provides an indication of what is disclosed in Fig. 7E. Fig. 7E is a bottom view of a Dual Driver Cap 420 for driving two distractors. See col. 11, lines 37-38. On the one hand, the Final Office Action asserts that the working channel ports are disclosed by the structure of the hollow tubes near refs. 100 and 348. On the other hand, the Final Office Action refers to Fig. 7E to assert that the working channel ports together form an oval shape. However, Fig. 7E does not show any portion of the hollow tubes or other structure asserted to include the first and second working channel ports. Accordingly, Fig. 7E cannot disclose that the working channel ports together disclose a substantially oval cross-sectional shape since it does not even show the working channel ports as identified in the Final Office Action.

Furthermore, the pair of parallel hollow tubes that have area 354 therebetween form an overall shape for the passages of the hollow tubes that includes side-by-side circular cross-sections. However, there is no disclosure that Dual Outer Sleeve 340 provides a pair of ports that together form a substantially oval cross-sectional shape. Accordingly, for this additional reason, a proper prima facie case for rejecting claim 1 has not been established, and withdrawal of this basis of the rejection of claim 1 is respectfully requested.

Claims 2-6 and 8-19 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable and for other reasons. For example, claim 3 recites "wherein said tip of said central distractor is centrally located in said housing." The Final Office Action asserts that because a tip of the distractor 100 in Michelson is between sidewalls of the device, it is centrally located in the device. Michelson discloses a distractor 100 in each tube of Dual Outer Sleeve 340, and a foot plate 344 shown in Fig. 7C that includes a solid wall located distally of and centrally between the hollow tubes that prevents tips 102 of either of the distractors 100 from

being centrally located between the hollow tubes. Rather, tips 102 are clearly laterally located in Dual Outer Sleeve 340, and cannot be centrally located with respect to Dual Outer Sleeve 340. Claim 3 is respectfully submitted to be allowable. Regarding the limitations of claims 4, 5 and 8, the Final Office Action repeats the limitations recited in these claims but does not indicate how it is considered the Michelson discloses the features recited therein. A review of Michelson finds no disclosure of the features recited in these claims, and there is no support for the rejection of these claims provided in the Final Office Action or in the cited reference. Accordingly, a prima facie case for rejecting claims 3-5 and 8 has not been established.

Claim 9 recites "wherein said inner wall defines a groove therein." The Final Office Action asserts that the "inner wall defines a groove therein, since the inner wall generally defines a round wall, so a portion of the circle that is (sic) defines can be considered to be a groove." It is not understood how a portion of a circle, which is a geometric shape, can be considered to disclose a groove defined in an inner wall. An arc of a circle is not a groove in a wall under any reasonable interpretation of the term groove. Furthermore, claim 10 depends from claim 9 and recites "wherein said central distractor includes a housing engaging portion having an actuatable finger for removably engaging said groove of said guide sleeve housing." The Final Office Action asserts that crown or head 110 of distractor 100 is an actuatable finger that removably engages the groove in the inner wall of the guide sleeve housing. Crown or head 110 is formed with shaft and is immovable relative thereto so the head can be impacted to drive distractor 100 or engaged by a puller to remove distractor 100. See col. 20, lines 9-63. There is no disclosure that head 110 is actuatable or otherwise engageable to any groove in the inner surface of Dual Driver Cap 420. Furthermore, claim 11 depends from claim 10 and recites "said central distractor tip includes a reduced height configuration whereby said upper and lower distraction surfaces are orientable away from vertebral endplates of a spinal disc space and said finger is not engaged to said guide sleeve housing; and said central distractor tip is rotatable to a distraction configuration from said reduced height configuration whereby said upper and lower distraction surfaces are orientable toward vertebral endplates of a spinal disc space and said finger is actuated and received in said groove thereby coupling said guide sleeve housing to said central distractor." The Final Office Action fails to identify how Michelson is considered to disclose these features. A review of Michelson reveals no indication of how crown or head 110 of

distractor 100 is rotated in Dual Driver Cap 420 so that the tips 102 are rotated between reduced height configuration where crown or head 110 does not engage a groove in Dual Driver Cap 420 and a distraction configuration where crown or head 110 is received in a groove in Dual Driver Cap 420 to couple distractor 100 to a guide sleeve housing. Accordingly, a prima facie case for rejecting claims 9-11 has not been established, and withdrawal of the rejection of claims 9-11 is respectfully requested.

Claim 12 recites "wherein said guide sleeve housing is removably engageable to a housing inserter, said housing inserter having an actuatable finger positionable to engage said housing inserter to said guide sleeve housing." The Final Office Action does not identify any structure in Michelson corresponding to a housing inserter. Furthermore, there is no disclosure of any inserter or any structure having an actuatable finger to engage an inserter to Dual Outer Sleeve 340 or Dual Driver Cap 420. Claim 13 depends from claim 12 and recites "wherein said housing inserter and said guide sleeve housing are positionable over a proximal end of said shaft of said central distractor and movable therealong to position said guide sleeve housing in an operative position adjacent the spinal disc space." Since there is no disclosure of a housing inserter in combination with the Dual Outer Sleeve 340 and Dual Driver Cap 420, there is no disclosure of the features recited in claim 13. Accordingly, a prima facie case for rejecting claims 12 and 13 has not been established and withdrawal of the rejection of these claims is respectfully requested.

Thus, a prima facie case for rejecting claims 2-6 and 8-19 depending from claim 1 has not been established. Withdrawal of the rejection of these claims is respectfully requested.

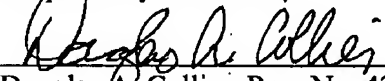
Claim 27 recites "a shaft; an engaging portion at a distal end of said shaft releasably engageable with a member positioned about said engaging portion, wherein said member is a guide sleeve housing defining first and second access ports therethrough for accessing a spinal disc space with said engaging portion removed therefrom, said access ports being in communication with one another and together defining a substantially oval cross-sectional shape through said guide sleeve housing; and a distractor tip extending distally of said engaging portion, wherein said engaging portion includes an enlarged configuration relative to said shaft and said distractor tip." As discussed above, Michelson does not disclose the hollow tubes of Dual Outer Sleeve 340 include passages that are in communication with one another. Rather, the

passages are isolated from one another by the walls of the tubes. Nor does it disclose that the passages of the tubes together define a substantially oval cross-sectional shape. Rather, the passages together define a pair of side-by-side circular cross-sectional shapes as discussed above. Thus, a prima facie case for rejecting claim 27 has not been established, and withdrawal of the rejection of claim 27 is respectfully requested.

Claims 28-32 and 34-35 depend from claim 27 and are allowable at least for the reasons claim 27 is allowable and for other reasons. For example, claim 31 recites "wherein said engaging portion includes a receptacle and a finger movable into and out of said receptacle between an engagement position for engaging said member positioned about said engaging portion and a release position for releasing said member from said engaging portion." Claim 32 depends from claim 31 and recites "wherein said distractor tip is rotatable relative to said engaging portion with said shaft, said distractor tip being movable between a distraction configuration wherein said finger engages said member and a reduced height configuration wherein said finger is released from said member." As discussed above with respect to claims 10-11, Michelson does not disclose any finger that is movable into and out of a receptacle, or a rotatable distractor tip that is movable between distraction and reduced height configurations to engage and release a finger from a receptacle. Accordingly, claims 31-32 are not disclosed in Michelson, and withdrawal of the rejection of claims 28-32 and 34-35 depending from claim 27 is respectfully requested.

In view of the foregoing remarks, it is respectfully submitted that the present application is in condition for allowance with pending claims 1-6, 8-19, 27-32 and 34-35. Reconsideration of the present application is respectfully requested. Timely action towards a Notice of Allowance is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the present application.

Respectfully submitted,


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Response to Final Office Action
Serial No. 10/689,277
Attorney Docket No. MSDI-269/PC545.02
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